IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 295 of 2006
DATE OF DECISION: 17.11.2006
***

Saudagar Singh **..PETITIONER**

VS.

Presiding Officer, Labour Court and others.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. Vikas Singh, Advocate**
for the petitioner.
Ms. Nirmaljit Kaur, Addl. A.G. Punjab
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ARVIND KUMAR, J.

The petitioner is aggrieved with the award dated 12.8.2004, copy Annexure P-1 whereby the claim of the petitioner has been dismissed.

It emerges from record that on account of remaining absent from 1.4.1990 onwards, the petitioner, who was employed as a Driver with the respondents No.3-department, was charge-sheeted on 4.5.1990. An enquiry was also conducted and on the basis of enquiry report, the services of the petitioner were terminated on 24.3.1994. He raised an industrial dispute, which after thorough contest was dismissed by the Labour Court vide the impugned award dated 12.8.2004. Hence the present writ petition.

It may be mentioned here that on January 10,2006 while issuing notice of notice, following contention of learned counsel of the petitioner was recorded by the Division Bench of this Court:-

> "Learned counsel for the petitioner very fairly states that the enquiry has been corectly held but the punishment of dismissal is too harsh vis-a-vis the facts averred accordingly. This aspect has not been considered by the Labour Court as envisaged under Section 11-A of the Act.

Notice of motion for the aforestated only for 11.5.2006."

Thereafter, joint written statement on behalf of respondents No.2 and 3 was filed. It has been averred that the award is quite legal with genuine reasons. Thus, dismissal of instant petition has been sought.

We have heard learned counsel for the parties to the extent notice of motion was issued that the extreme punishment of dismissal imposed upon the petitioner is disproportionate to the proved misconduct and that the Labour Court must have invoked its powers under Section 11-A of the Industrial Disputes Act, 1947 (for brevity the Act).

The contention of the petitioner-workman in this regard is meritless. The Tribunals jurisdiction is akin to one under Section 11-A of the Act. While exercising such jurisdiction, no doubt, it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

The Hon'ble Supreme Court in the case of **State of U.P. v. Sheo Shanker Lal Srivastava 2006(3) SCC 2006** observed as follows:

> "22. It is now well settled principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."

In the instant case, the petitioner workman remained absent for a period of about three years. Remaining absent for a long time, in our view, cannot be said to be a minor misconduct. Negligence and lack of interest can be arrived at by looking into the said period of absence, more particularly, when the same was unauthorized.

In the case of **State of Rajasthan v. Mohd. Ayub Naz 2006 (1) SCC 589,** the employee was absent for a period of 3 years and thus

taking into account the said period, it has been observed as follows:

> "18. For the foregoing reasons, we are of the opinion that a government servant who wilfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court, has no right to receive the monetary/ retiral benefits during the period in question. The High Court has given all retiral benefits which shall mean that a lump sum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was wilfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent."

Mohd. Ayub's case (supra) has also been followed in the case of **North Eastern Karnataka Road Transport Corporation Vs. Ashappa 2006 SCC (L&S) 942,** wherein the employee remained unauthorizedly absent for about 3 years and it was observed that absence for a long period cannot be treated as a minor misconduct and could not be treated leniently.

In view of the ratio laid down by the Apex Court in various authoritative pronouncements above, we are of the considered view that the punishment of dismissal is not disproportionate to the proved misconduct of the petitioner. The Labour Court has rightly declined indulgence. We do not find any infirmity in the impugned award. The petition is wholly without merit and the same is hereby dismissed, leaving the parties to bear their own costs.

(ARVIND KUMAR)
JUDGE

November 17,2006 **(J.S. NARANG)**
Jiten **JUDGE**